

REMARKS

Claims 11-16 were pending. All pending claims were rejected in the Final Rejection. In view of the foregoing amendments and arguments that follow, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103(a) over Zapata^a et al. (FASEB J. 1995. 9:A1479) in view of Griffiths et al (U.S. Patent 5,670,132, filed 09/20/1994, upon reconsideration.

Briefly, Applicants have amended the dependent claims to recite "The" instead of "An". No new matter is added thereby.

Rejection under 35 U.S.C. § 103(a)

Claims 11-16 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zapata et al. (FASEB J. 1995. 9:A1479) in view of Griffiths et al (U.S. Patent 5,670,132, filed 09/20/1994). Applicants traverse this rejection.

The Office argues that the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made. Applicants' maintain, however, that Griffiths et al., teaches away from the invention. Although the Office acknowledges that, with the antibody fragments of Griffiths et al., the radiolabel is attached to a hinge region cysteine, it re-writes the reference by stating that that is not the only site for linking the radioisotope (Final Rejection, page 3-4). This re-writing of a reference is inappropriate and reflects a clear misuse of hindsight. "A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 421 (2007) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 36 (1966). *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988). ("One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.").

Griffiths et al. makes it clear that the radiolabel is to be attached to the hinge region (see column 4, line 47 to column 5, line 3 and all the examples). Indeed, Griffiths et al. describes pegylating an intact immunoglobulin to leave the hinge region available for the radiolabel (see column 3, line 62 through column 4, line 12). The Office does not get to ignore these specific teachings of Griffiths et al. to its benefit (*W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Clearly, Griffiths et al. does not teach pegylation of a hinge region cysteine in a monovalent fragment as claimed.

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PATENT

CONCLUSION

Applicants submit that all claims are in condition for allowance, and respectfully requests early notification of the same. If the Examiner disagrees, he is requested to contact the undersigned at the number provided below.

Respectfully submitted,

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